STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Americana Towers Condominium Association	)	
	)	
v.	)	**No. 05-0415**
	)	
Commonwealth Edison Company	)	

INITIAL BRIEF OF AMERICANA TOWERS CONDOMINIUM ASSOCIATION

Michael Munson
Law Office of Michael A. Munson
123 N. Wacker Dr.
Suite 1800
Chicago, Illinois 60606
(312) 474-7872
(312) 873-4154 (facsimile)
michael@michaelmunson.com

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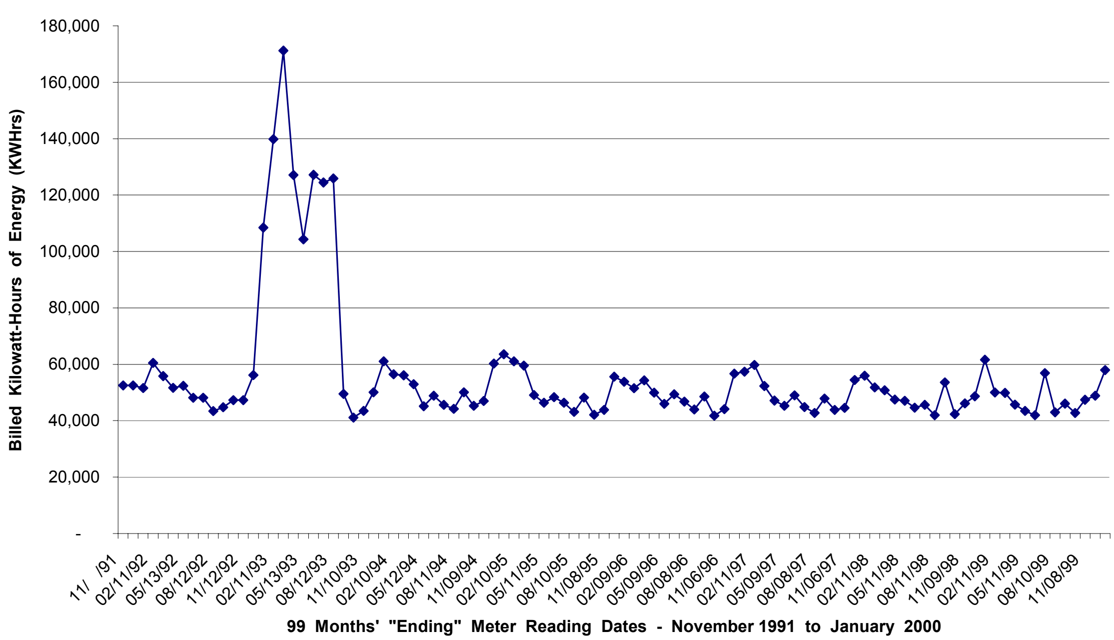
I. INTRODUCTION

On December 24, 1992 Americana Towers Condominium ("Americana") experienced a major fire that destroyed, among other things, the electrical distribution panel. Service to the building was out for almost a day. From this date through September 13, 1993, Americana's total billed electrical demand and associated usage doubled causing the building to take service on a more expensive rate. These nine months of extraordinarily high demands and usage discontinued the moment Commonwealth Edison Company ("ComEd") replaced the cumulative meter with a time-of-day meter in September 1993. Americana continued on the pricy rate until July 1999.

To begin to understand the significance of the additional load billed to this ComEd customer, the following graph is illustrative of Americana's kilowatt-hours ("KWH") usage over an eight year period found in Americana Ex. 1.0 at 188 – 193:

AMERICANA TOWERS CONDOMINIUMS - 1636 N. Wells - Chicago, Illinois

Billed Kilowatt-Hours of Energy on Meters #G250979/#G685520/#G725883/#G726183



To put the increase in kilowatts ("KW") of demand in perspective, approximately 200 KW of additional load, the equivalent of 200 new homes, was billed to Americana during the nine months, doubling the normal monthly peak demand of the entire 36 story building. Given the historical load factor of the building, such supplementary load would have to operate an average of sixteen hours a day for 270 consecutive days. Americana has not reached such highs in either KW or KWH previous to this nine-month period or since.

The Record is clear that neither mechanical renovations nor new load was added to the building to account for such increases in billed usage and demand.

For its part, ComEd has had quite a history with mis-billings with this customer, and has admitted to a multitude of other billing errors during this eight year time period. While ComEd has rectified a few of its mistakes, numerous refunds continue to be outstanding in which Americana was overcharged in addition to the egregious example provided above. Americana provides the basis for its claims in the enumerated sections below.

In short, Americana requests the Commission enter an Order requiring ComEd to immediately pay Americana the amount of $181,182.35 for errors not properly rectified.

II. COMED OVERCHARGED AMERICANA FOR EXCESS DEMAND AND USAGE FROM DECEMBER 1992 THROUGH SEPTEMBER 1993

Americana is a condominium building built in 1971 with much of its original equipment intact. (Americana Ex. 2.0 at 31; Ex. 3.0 at 22). Mr. Rollins, the building's engineer for the past twenty-eight years, testified that the mechanical equipment and occupancy has remained constant during his tenure. (Americana Ex. 3.0 at 37 – 51). No significant new load was added to the building at any time since 1988. (Id. at 80-83; Tr. at 100).

The building uses a two-pipe fan coil system and is heated by natural gas and cooled by an electric centrifugal chiller (Americana Ex. 3.0 at 26-28). The chiller is the largest single electrical load in the building and is housed on meter G036235/G733658 (*See* Tr. at 349-354). With a two pipe system, either hot water or chilled water can flow through the pipes, depending upon whether the building is being heated or cooled. (Id.). Tenants in the building are separately metered by ComEd. (Americana Ex. 3.0 at 45-47). Outside of the chiller and natural gas boiler, the other significant mechanical equipment consists of a few 30, 40 and 50 horse power motors, fans, pumps and elevators. (Americana Ex. 3.0 at 31-33). A half dozen ComEd meters account for the building load, which is detailed in Americana's Exhibit 1.1.

On December 24, 1992, various water pipes burst at Americana Towers, eventually leaking into the main electrical vault causing a fire and a power outage at 3:30 a.m. Christmas Day. (Americana Ex. 3.1). The building filled with smoke, which had originated from the electrical vault room, where the main switchboard had a fault causing the power outage. (Id.) The Chicago Fire Department and ComEd were called to the building on an emergency basis, and power was ultimately restored at 5:45 p.m. Christmas day. (Id.)

As a result of the fire in the electrical vault, the main electric distribution panel and associated equipment were damaged and repaired or replaced. (Americana Ex. 3.0 at 3-4). All of Americana's electricity from ComEd comes into the main distribution panel.

(Id.) The wires are fed or distributed into multiple sub-panels which house ComEd's current transformers and metering. (Id.) Americana went through great trouble restoring existing loads and incurred over $100,000.00 in various costs as a result of the fire and power outage. (Id.). No new electrical loads were added to the building during this process. (Id.).

Beginning with the billing period 12/12/92 – 1/13/93, and extending nine months through the billing period 8/12/93 – 9/13/93, demand and usage associated with ComEd cumulative meter number G250979 ("Meter 979") tripled with respect to previous and subsequent time periods. (*See, inter alia*, Americana Ex. 1.1). In fact, the demand and usage associated with Meter 979 (and its successive meters) remained consistent at all other times with loads ranging between 61.8 KW and 110.8 KW (Tr. 355). This meter is for the public areas of the multi-family, multi-story condominium building; outside of the nine months in question, this service had constant, steady and consistent electrical usage, within the same narrow range, using the same amount of electricity every respective month every year. (Americana Ex. 2.0 at 28). Americana proved this consistency to be true for over the past 34 years. (Id.). Any abnormal electrical equipment usage at Americana would have to occur using only the energy devices connected to Meter 979. (Tr. at 383). However, the exact billing month (9/13/93 – 10/12/93) that cumulative Meter 979 was replaced with Time-Of-Day Meter G685520 ("Meter 520"), demand and usage returned to normal, historical and consistent readings over the next several years. (*See* Americana Ex. 1.1; Americana Ex. 1.0 at 101 – 102).

ComEd owns and controls all the electronic demand and usage sensing equipment associated with the meters at Americana's premises. ComEd installs meters on customers' premises. (Tr. at 360). ComEd owns the meters it installs. (Tr. at 361). ComEd owns the current transformers associated with meters. (Id.). ComEd owns and calibrates the meters and associated sensing instruments. (*See* Tr. at 407). ComEd houses its meters in a space provided by the customer, and current transformers are in a locked cabinet where electricians should not venture without ComEd's authorization, nor should an electrician who is not an employee or agent of ComEd handle a ComEd meter. (Tr. at 387-388, 389). ComEd tests its own meters, and ComEd tests meters not at the customers' premises, but at its shop in Oak Brook, Illinois. (Tr. at 406). ComEd did not test the sensing instruments or current transformers associated with Meter 979. (Tr at 409). ComEd reads the meters and bills the customer for usage associated with the ComEd meters. (Tr. at 362). Finally, ComEd is compensated for its metering and associated equipment costs through its tariffs on file with the ICC. (Tr. at 362).

There is more than a simple inference that ComEd made billing errors associated with Meter 979. During the nine-month period at issue, the total building load approximately doubled in usage and demand, as a result of readings, some obviously estimated, for Meter 979. As explicitly shown through Americana Exhibit 1.1, these nine months show an anomaly in demand and usage that is not reasonable or adequately explained. ComEd did not proffer any reasonable explanation for such increased demand and usage, and Mr. Rollins, an engineer at the building for the past 28 years, testified that no new equipment was added to the building during this relevant time-period. In fact no major mechanical equipment retrofit has taken place since 1988 when the building replaced an absorption chiller with a centrifugal chiller. The facts clearly show that no equipment was added to the building.

Furthermore, while it is theoretically possible to achieve a spike in load for one month, although highly implausible for up to three times the normal historical load on a meter, the fact that this particular spike continued for nine consecutive months is impossible, given the magnitude of the increase – roughly 200 KW on a single meter. For reference as to the magnitude of 200 KW, such demand provides enough electricity to power 200 homes. (*See* Americana Cross Ex. 7A and 7B; Tr. at 335 - 336). Furthermore, Mr. Geraghty's load factor analysis contained in ComEd Ex. 1.1 and discussed in ComEd Ex. 1.0 and during cross-examination illustrates Americana's point perfectly. A load factor provides a ratio of how a customer operates its electrical equipment over a period of time: A high load factor indicates a customer operates equipment at close to maximum demand over extended periods of time; a low load factor demonstrates that a customer operates its equipment at or close to maximum demand over only relative short periods of time. (ComEd Ex. 1.0, at 145-153). Mr. Geraghty then goes on to demonstrate that Americana's load factor for Meter 979 during the nine month billing period at issue is consistent with the load factors for months outside of the billing periods in question. (Id. at 153 - 157). While Mr. Geraghty is correct in his assertion that such analysis is an indication that the demand readings were not likely double or triple punched by a meter reader, as the increase in demand was accompanied by a symmetrical increase in usage, such analysis adds significant leverage to the inference that such billings were in error due to the magnitude of the energy that would have to be consumed at the facility. The load factor stays the same when both the KW and KWHs triple. (Tr. at 331).

In order to achieve the load factor deduced by Mr. Geraghty, Americana would have to operate the **additional** load of almost 200 KW over the nine month period in question for an average of 16 hours a day, for 270 days straight without exception. (*See* Ex. 1.1; *see also* Tr. at 323 - 324). There was no testimony that Americana added another thirty-two stories to its building, or some such impressive theory as to the additional load, because such additional load and usage didn't exist except on the ComEd bills to Americana. In fact, there was uncontroverted testimony that no new load was added to the building, nor any major mechanical renovations occurred during this, or any other relevant time-frame. (Americana Ex. 3.0 at 37 – 43).

For its part, ComEd relies on the accuracy of the meter testing performed by ComEd's meter department after the meter was removed from Americana's premises in September of 1993 (ComEd Ex. 1.0 at 187 – 188), while ignoring the fact that once a new meter was installed, usage and demand returned to normal, historical levels that failed to reach even 115 KW of demand for the next 70 months. (*See* Americana Ex. 1.1). ComEd Witness Scherer provided testimony as to the accuracy of the meter test results on two of Americana's meters, including Meter 979. Mr. Scherer concludes that the meters tested within acceptable limits as required by the ICC at ComEd's Oak Brook facility. Mr. Scherer does not, and cannot, testify as to the accuracy of the meter while it was installed at the customer's premises before it was removed, or as to the accuracy of the billings submitted to Americana. (*See* Tr. at 425 – 426, 447) Furthermore, Mr. Scherer does not testify to the accuracy of Meter 979's connecting equipment or to the associated CTs since a field test was not performed. (Tr. at 447). Mr. Scherer does testify that the take-out read matched the September 1993 billing read (Tr. at 439), which shows, at best, that the meter was not in use for the thirteen days between when the meter was replaced at the customer's premises (9/16/93) (Americana Ex. 1.1) and when it was tested (9/29/93) (ComEd Ex. 3.1).

The other main point Mr. Scherer provides is that the 300 amp CTs associated with Meter 979 have a "rating or safety factor" of 1.5, and therefore such CTs are capable of reading the substantial increase in usage that occurred over the suspect nine month period. (ComEd Ex. 3.0 at 3). However, ComEd certainly does not take into account this factor in its sizing guide (Americana Ex. 2.6). According to ComEd's Rider 7 – CT Sizing Guide, a 300 amp CT, such as that associated with Meter 979, is designed and installed for an intended maximum load of 212 KW, an amount of double the historical load on Meter 979. Such sizing of a 300 amp CT was adequate for Meter 979's normal load history. (*See* Americana Ex. 1.1). It stands to reason that ComEd would have originally installed 500 or 600 amp CTs or would have replaced the 300 amp CTs if such CTs overloaded for extended periods of time. The successor to Meter 979 retained 300 amp CTs, which continues until present. (Americana Ex. 2.0 at 22).

ComEd, by solely relying on a meter read test that took one minute to conduct (Tr. at 431) ignores the realities of the objective facts surrounding the nine-month period in question. Such reliance is also misplaced as such meter tests are not conclusive as to whether Americana was or was not over-billed. For example, just because a meter tested accurately in ComEd's shop, does not necessarily mean that the customer was billed correctly. (Tr. at 404). Wrong multipliers can be applied by ComEd rending the resulting billing incorrect. (Tr. at 405). In fact, there are many differentiations in billing versus metering. (Id.) For example, if a meter reader double punches the demand on a meter, a customer would be over-billed. (Id. at 405 - 406). Or, a meter reader may read the meter incorrectly, resulting in a mis-billing. (Id.) Finally, a meter will not function and run correctly if the connecting lines are not hooked-up properly. (Id. at 416).

Clearly, the meter tests contained in ComEd Ex. 3.1 are not definitive proof that Americana was not over-billed for the nine-month period in question. In fact, such information, while interesting, does not tell the complete picture of what occurred at Americana Towers. Many other variables exist that render such a simple explanation incomplete: The sensing instruments located at Americana's premises were not tested at the test location (Tr. at 408), and no information is available as to the specifics of any tests that occurred with the sensing instruments associated with the tested meters. (*See* Tr. at 408 – 409). The current transformers that were attached to the tested meters were also not tested in conjunction with the meters. (Id.) In fact, the current transformers could have been damaged in the fire that occurred on December 25, 1992. (Tr. at 411). ComEd Witness Scherer stated when asked whether a short could have caused a wrong meter read: "I can't speculate what would have happened in that situation other than that meter was accurate when we tested it." (Tr. at 416). When asked whether the terminals housing a meter could be loose causing a wrong meter read, Mr. Scherer stated: "Here, again, I can't speculate as to what actually happened out there. I did not see it. ***All we know is when we tested the meter, it was correct***." (Tr. at 417 (emphasis supplied)).

Clearly, the inference that ComEd over-billed Americana is supported by the evidence contained in the Record. Logical inferences based on evidence are a permissible and integral part of legal reasoning. (*See* generally *Consolino v.Thompson*

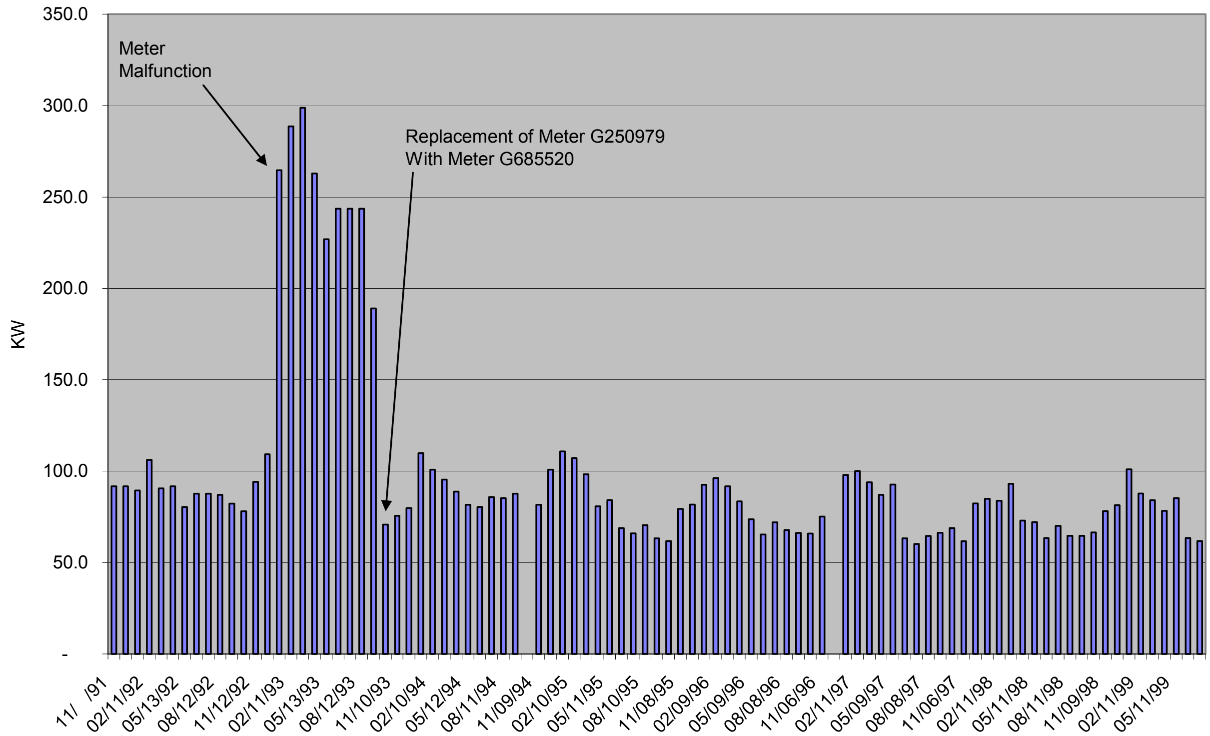
(1984), 127 Ill. App.3d 31, 468 N.E.2d 422). In Trustees *of Schools of Tp. No. 8 v. Lilly*, 373 Ill. 431, 26 N.E.2d 489, the court defined a presumption at page 438: "A presumption is an inference which common sense draws from the known course of events or from circumstances usually occurring in such cases." (Sears v. Vaughan, 230 Ill. 572.) In Johnson v. Pendergast, 308 Ill. 255, 139 N.E. 407, at 261, the court said:

> Where two facts are so related to each other that in reason and human experience the existence of one may fairly be inferred from the other, the law may declare that proof of one shall be prima facie evidence of the existence of the other. Such a rule is one which the policy of the law and the ends of justice require, and in every case it is sufficient to authorize the finding of the fact presumed to exist unless contradicted or explained.

In this matter, the facts show that Americana was billed at excessive demand and usage levels over the course of the nine month period. Uncontroverted facts demonstrate that Americana could not have used more electricity, during any comparable month, than they had already established every year for the past 29 years. (*See, inter alia*, Americana Ex. 3.0). Facts contradicting or explaining such excess demands and usage do not exist on the Record, except to the extent that ComEd Witness Geraghty suggests that the appearance within two entries in ComEd's Terminal Transaction Register ("TTR") indicates that electrical work was done at the building (ComEd Ex. 1.0 at 169 – 177). Americana does not dispute electrical work was done at the building; indeed, such work was undertaken to resurrect the building's fallen electrical system, not to add load. (Americana Ex. 1.0 at 80 – 86). Electricians, the Chicago Fire Department and ComEd are not called out to a high-rise building, on an emergency basis, without prior notice, on Christmas Eve, so that electricians can add new electrical load.

Furthermore, the Record is clear that Americana is a natural gas heated facility and does not peak in the winter months. (*See e.g*. Americana Ex. 3.0 at 27; Americana Ex. 1.1) In fact, the summer air conditioning months are when Americana uses their maximum KWs of Demands. (Id.) Historically, the KWs of peak demands for the whole building have never legitimately reached 500 KW or greater during any summer or any non-summer month. (Americana Ex. 1.0 at 194 – 203). In addition, the hottest day of any year is when one would expect the maximum usage of electricity to peak for more than a sustained thirty minute interval for a building cooled by an electric chiller. Even during last summer's billing period (from 07/12/06 to 08/10/06), while the Chicago-land area experienced some of the hottest days on record, Americana's total billed demand reached only 435.89 KWs. (Id. at 205 – 209). Americana's maximum total billed demand for the past fifteen years was 472.63 KW, occurring in the summer billing month from 7/13/99 to 08/10/99. (Id.) A graphical illustration of the discrepancy in demand at the Americana facility over time, which highlights the obvious anomaly, was provided in Americana Ex. 1.0 at 101 – 102:

Demand Readings for Meter 250979 and After Replacement



Finally, the Record reflects the logical course of events that occurred with respect to the nine month period in question:

1. Outside of this period, the normal, historical demands consistently ranged between 60 to 110 KW, along with proportionately billed KWH, for over 90 months on Meter 979;

2. There was a major fire that damaged the main electrical distribution panel in December 1992;

3. The demands on Meter 979 tripled to almost 300 KW beginning in December 1992, along with correspondingly triple-billed KWH;

4. ComEd replaced Meter 979 in September 1993;

5. Immediately upon replacement, the demands immediately returned to 60 to 110 KW, along with correspondingly lowered KWH, for the next several months and years;

6. No reasonable explanation exists as to the cause of such increased demand and usage; moreover, the evidence definitively shows that no new significant load was added to the building since 1988.

7. No reasonable evidence exists as to why such additional demand and usage disappeared at the moment the new meter was installed;

8. ComEd is in complete control over its meters, associated sensing equipment, CTs and billing system;

Accordingly, ComEd over-billed Americana with impunity.

As a result of such over-billing, Americana requests the Commission Order ComEd to pay Americana for over-billed KWs associated with this nine-month period of $42,325.24, and for over-billed KWh associated with this nine-month period of $54,570.29.

III. COMED IMPROPERLY SWITCHED AMERICANA TO RATE 6T FROM RATE 6

In addition to the ComEd over-billings associated with significantly inflated demands and usage, there is another order of effect associated with the improperly billed demands on Meter 979: The excessive KW caused the total monthly billed demands to increase over 500 KW, the threshold for taking service on ComEd Rate 6T. This section addresses why Americana is entitled to a refund for being improperly switched from Rate 6 to Rate 6T.

At this point, many of the discussions surrounding the exact moment Americana was switched, and when such switching was proper, have been contentious. However, such discussions are for the most part irrelevant. The fact remains that but-for the over-billings associated with inflated demands for the nine months on Meter 979, Americana would not have been switched to the more expensive Rate 6T, after only one month or three as discussed below.

According to ComEd tariffs, customers with total monthly billing demands of 500 KW or greater for three of twelve monthly billings take service from ComEd at Rate 6T, instead of the less expensive Rate 6. (Americana Ex. 1.0 at 7). Americana's total billed peak demand reached 572.4 KWs for the billing month 5/13/93 – 6/14/94. (Americana Ex. 1.1). This incorrectly billed peak demand triggered a switch to Rate 6T beginning on June 14, 1993 after only one month of total billed peak demand of over 500 KW. (Americana Ex. 1.0 at 7). For the next three months through 9/13/93, coinciding with the summer months and therefore chiller load, Americana's total billed peak demand stood at over 500 KW. (*See* Americana Ex. 1.1).

However, some of the bills during this nine-month period were clearly estimated, without being appropriately marked as such, which calls into question ComEd's billing tactics. According to Americana Ex. 1.1, ComEd billed Americana for three months (5/13/93 – 8/12/93) for exactly the same KW for Meter 979 – a demand of 243.6 KW. ComEd Witness Miller testified that the May 1993 billing period was not estimated, nor was the July 1993 period, but the June 1993 bill was estimated to match the July 1993 reading. (Tr. at 249). However, ComEd Witness Miller contradicted herself by stating that the July meter read for Meter 979 was estimated from the June 1993 bill. (Tr. at

251). A review of Americana Ex. 1.1 shows that demands for the May and June 1993 billing periods are respectively equivalent for all six meters, and that the total billed peak demand for those two billing periods equaled 572.4 KW. However, only the demand for Meter 979 of 243.6 KW was equivalent for the June and July 1993 billing periods, which suggests that ComEd Witness Miller was correct when she stated that the July reading was estimated from the June 1993 bill (Tr. at 251) which was estimated from the May 1993 bill. (Tr. at 249). Therefore, it is clear that ComEd estimated the billing demands for the June and July 1993 billing periods, and neither of these bills clearly showed the word "estimate" on the face of the bill in violation of 83 Illinois Administrative Code Part 280.80, which states:

Section 280.80 Estimated Bills:

> a) All utilities shall make an actual meter reading at least every second billing period, and no utility may consecutively estimate a customer's service usage unless:
>
> > 1) the procedure used by the utility to calculate estimated bills has been approved by the Commission; and
> >
> > 2) the word "estimate" appears prominently on the face of the bill, in a manner previously approved by the Commission.
>
> b) Notwithstanding the provisions of subsection (a) of this Section, the utility may render an estimated bill for any billing period in which:
>
> > 1) the utility has taken appropriate and reasonable measures to read the meter, including but not limited to, making an appointment with the customer, scheduling readings for times other than normal business hours, and/or providing postal cards on which the customer may record the reading and mail it to the utility; or
> >
> > 2) the customer has knowingly and willfully denied reasonable access to the utility's representative for the purpose of taking an actual reading of the meter; or

> 3) the customer has otherwise made an actual reading of the meter unnecessarily difficult; or
>
> 4) circumstances beyond the control of the utility make an actual reading of the meter extremely difficult.

In addition, ComEd Witness Miller refutes ComEd Witness Geraghty, who stated that Meter 979 correctly registered an energy and demand reading each month. (ComEd Ex. 1.0 at 193 – 195). In fact, by admitting that some of the bills were estimated, Witness Miller directly contradicts Witness Geraghty, who stated that the meter accurately measured usage over the nine-month time period. (ComEd Ex. 1.0 at 201 – 204).

Furthermore, ComEd made significant, multiple errors with regard to the Americana account during this crucial nine-month time period:

1. Rate 6T is a time of day rate; accordingly, time of use meters are required to accurately split the load between on and off peak. ComEd adjusted Americana billings from July through October 1993 to account for not having the appropriate meter in place at the customer's premises, which is not included in Americana's claim, but is yet another example of a ComEd billing error nonetheless. (ComEd Ex. 2.0 at 74 – 92).

2. As a result of the excessive demands billed from Meter 979, Americana's total billed peak demand reached 572.4 KW for the billing month beginning 5/13/93. This incorrectly billed demand triggered ComEd to switch Americana prematurely to Rate 6T beginning on June 14, 1993, after only one month of demand in excess of 500 KW. (Americana Ex. 1.0 at 131 – 138). This switch is in violation of the tariff that requires three monthly demands in twelve months to be in excess of 500 KW. (Id. at 140 – 149).

3. As stated in the previous section, ComEd over-billed the demands and usage associated with Meter 979;

4. Also stated previously, ComEd billed for demand and usage readings during the nine-month period through the use of estimates;

5. Such estimated readings occurred for more than one month in a row, and;

6. ComEd did not accurately prominently display the word “estimate” clearly on its billings to Americana;

On September 16, 1993, ComEd replaced Meter 979 with the time of day Meter G685520. From this moment forward for the next 155 months (until present), the billed KWs of demand on that electrical service registered demands within the range of 60 – 111 KW. (Americana Ex. 1.0 at 150 – 155). On July 12, 1999, after repeated requests, Americana was switched from Rate 6T to Rate 6. (Americana Ex. 2.0 at 143).

The Record is clear; ComEd should not have switched Americana to Rate 6T, prematurely or otherwise, and violated the Illinois Administrative Code with respect to its billings provided to Americana. Since the highest legitimate total peak demand Americana has experienced in the last 15 years has never reached 500 KW, the threshold for taking service on Rate 6T, it is nonsensical to assume a valid billing of winter demands in excess of 400 KW, and summer demands in excess of 600 KW occurred legitimately.

Accordingly, Americana is due the amount of $61,465.60 to compensate for being billed on the wrong rate classification for the 73 months from 6/14/93 until 7/12/99.

IV. COMED OVERCHARGED AMERICANA FOR THE PERIOD 5/13/92 – 7/14/92

ComEd billed Americana for a two-month period for electric service commencing May 13, 1992 through July 14, 1992. While ComEd estimates billings from time to time, during this period ComEd made an incorrect calculation by summing the demand for Meter G250980 for these months. (Americana Ex. 1.0 at 216 – 221). As a result, Americana overpaid ComEd in excess of $2,000.00. (Id.)

There are at least three compelling reasons to substantiate this claim: First, the KWs of demands are suspicious in that they are the same for both months, which means that such amounts were estimated. Again, the word "estimate" did not appear on the face of the bill in contravention to Part 280.80 of the Illinois Administrative Code. Secondly, these demands are double any other non-contentious month, which demonstrates that such demands were summed instead of billed month by month. Finally, the Kilowatt-Hours are not out of line with the other ninety-two months of data – therefore, the load factor for this meter changed to almost one-half during just those 2 months between 05/13/92 to 07/14/92 as compared to other months. During all the other non-contentious months, the Load Factor on that meter averages between 80% to 97%. (Americana Ex. 1.0 at 223 – 231).

ComEd again points to the meter accuracy tests testified to by Mr. Geraghty and Mr. Scherer as evidence that Americana was billed appropriately. However, this was an unusually billed month where two months were billed simultaneously. Both months show equivalent demands and usage (*See* Americana Ex. 1.1), which means that actual readings were not used, so the accuracy of the meter argument is a non-sequitor. Again, just because a meter tested accurately in ComEd's shop, does not necessarily mean that the customer was billed correctly. (Tr. at 404).

ComEd also suggests that their billing is correct because if Americana's assertions were true in that the correct demand should be 89.7 KW, this value would be the lowest demand billed on this meter for the entire ~ 90 month period at issue. (ComEd Ex. 1.0 at 352 – 355). However, one half of 179.4 KW is much closer to the 30+ year historical load than ComEd's assertion of the full incorrect amount. (Americana Ex. 1.0 at 238 – 239; *see* Americana Ex. 1.1).

Given that the KWH usage for the two months are not out of line with data contained in Americana Exhibit 1.1, and the load factor dropped to almost half of what is normal, the logical inference suggests that ComEd double-billed the two month demands during this time frame.

Accordingly, Americana is due $2,333.30, exclusive of taxes and interest, which was calculated by dividing the incorrect billed demands during each month by two and then multiplying that amount by the actual average KW charge within the bill. (179.4 KW/2 = 89.7 KW x $11,523.43/443.0 KW = $2,333.30). (Americana Ex. 1.0 at 237 – 240).

V. COMED OVERCHARGED AMERICANA FOR THE BILLING MONTH OF 8/12/93 TO 9/13/93

Similar to the discussion in Section IV, the billed demand on Meter #G250980 ("Meter 980") was twice the normal historical for the period 8/12/93 – 9/13/93. Again, the kilowatt hours associated with this meter do not line up with the demand. This meter's demand was likely double-punched that month. (Americana Ex. 1.0 at 242 – 245).

Meter 980 was replaced on 9/16/93 (along with the replacement of Meter 979) three days after the suspect billing month with a time-of-day meter #D945321. (Id. at 246 – 247). Once the time of day meter was installed, the demands on that meter were consistent for the next 155 months. (Id.)

The facts show that the demand on the replaced meter registered 196.2 KW, far and away the highest demand ever billed on that meter. (*See* Americana Ex. 1.1). Unlike the previous mistake on this meter discussed in the previous section, which constituted a double-billed two month demand, the logical inference is that this ComEd error was a result of a double punched demand that occurred during one month and applied twice to the same bill. (Americana Ex. 2.0 at 241 – 245). A meter can be read improperly; in fact, if a meter reader double punches the demand on a cumulative meter, that action would result in ComEd overbilling a customer. (Tr. at 405).

ComEd's arguments do not necessarily address the above points but focus instead on ComEd rectifying a different error during that time period, as well as noting that energy consumed during this particular month was the fourth highest consumption in the ~ 90 month period provided in Americana Exhibit 1.1. (*See* ComEd Ex. 1.0 at 392 – 395). However, this month in question (8/12/93 – 9/13/93) coincides with the controversial nine-month billing period discussed in Sections II and III of this brief. Suffice it to say that the energy amounts of those periods are disputed. In any event, this particular bill was estimated, and appropriately marked as such, so any actual readings are difficult to ascertain. However, ComEd Exhibit 2.2 may provide some insight, if Americana is interpreting it correctly, which shows that for Meter 980 for the month in question, that the Bill Statement (demand of 196.2) differs from the Calculated Value (demand of 131.4).

The anomaly of the high demand for this month on an estimated bill is suspect. Americana maintains it was over-billed $1,426.37, exclusive of taxes and interest, as a result of this ComEd error. (Americana Ex. 1.0 at 252). This amount was calculated by dividing the incorrect billed demand by two and multiplying that amount by the applicable KW charge, in that 196.2 KW/2 x $14.54/KW = $1,426.37. Given the information contained in ComEd Exhibit 2.2 with a calculated value of 131.4, the calculation would be 196.2 – 131.4 = 64.8 KW x $14.54/KW = $942.19, exclusive of taxes and interest.

VI. COMED OVERCHARGED AMERICANA FOR THE BILLING MONTH OF 6/13/94 TO 7/13/94

Meter #G101966 ("Meter 966") had 0.0 KWs for almost every month in the history of the building, but this particular month, the meter reader likely read the meter's demand as a dial turnover at 99.99, and the bill showed usage as 100.0 KWs. (Americana Ex. 1.0 at 259 – 261). According to the bill issued by ComEd, the same meter's energy portion is zero KWH, which is impossible if a demand of 100 KW was reached during that same month. (Id. at 261 – 263). ComEd confirms this analysis and admits to over-billing. (ComEd Ex. 1.0 at 414 – 415). However, ComEd refutes Americana's request for a refund by asserting that a refund, had one been issued, would have appeared on a missing bill (Tr. at 392).

During the course of this proceeding, Americana provided ComEd with 89 out of 93 ComEd electric bills for the period 10/10/91 – 7/12/99, a percentage of 96% of the requisite bills. Of the four missing bills, only two are remotely relevant for purposes of possibly containing a credit.

The first missing bill (3/16/93 – 4/14/93) is basically undisputed in terms to any credits being applied on the face of that bill as that bill was provided before Americana was switched to Rate 6T (Americana Ex. 1.0 at 366 – 393).

The second missing bill (9/12/94 – 10/11/94), the one relevant to this particular claim in this section of the brief, was easily recreated using ComEd's own billing data from the bill before and also the bill after. In addition, payment voucher numbers matching the amounts charged were demonstrated. (Americana Ex. 1.5; Americana Ex. 1.0 at 398 – 421).

A copy of the third missing bill (11/06/96 – 12/09/96) has been provided to Americana from ComEd that shows that the mistake ComEd made in overbilling on one particular issue was corrected in the subsequent billing period. (Tr. at 136). The likely reason this particular bill was missing in Americana's file is because there was no charge for that missing billing period and no checks were issued to ComEd at that time. Therefore, Americana did not retain that particular bill in their records. (*See* Tr. at 136). Americana has acknowledged this credit in its total claim against ComEd. (Id.)

The fourth missing bill (3/12/97 – 4/10/97) had only one page missing. That page was eventually found and attached as Americana Exhibit 1.6. No credits were apparent on the face of that bill.

Therefore, only one missing bill is at issue in this proceeding: The 9/12/94 – 10/11/94 billing statement. Despite the missing bill occurring three months after this 100 KW meter misread occurred, ComEd refuses to refund any amounts for this claim, maintains a credit was applied on this missing bill, and questions whether billing adjustments for corrections of prior meter reading errors were contained on the missing bills. (*See* ComEd Ex. 1.0 at 444 – 450).

ComEd Witness Geraghty emphatically states that Americana's "attempts to reproduce the billing units has no value." (ComEd Ex. 1.0 at 444). However, ComEd again contradicts itself by Witness Miller stating that Americana provides a reasonable recalculation of a missing bill. (Tr. at 240). In addition, Witness Miller agreed that it is possible to recalculate missing bills using past and post-bill dates and billing determinants, but argued that it is not possible to see if there were any adjustments or credits contained on the missing bill. (Id.)

The issue of the over-billed 100 KW during the month of 6/13/94 – 7/13/94 claimed by Americana is not contested; ComEd admits to the error. The issue to be determined is whether the missing billing statement three months after the error occurred contained any adjustments or credits to compensate for this particular error. Unlike the evidence presented to rectify one of the errors originally alleged by Americana occurring between 9/9/96 – 10/8/96, in which ComEd was able to show that a credit was apparently provided one month after the error occurred, and which amount Americana no longer claims, there is no evidence on the Record of any credits issued for the 100 KW error on the September 1994 bill. On the contrary, the evidence shows that the bill is easily recreated, and that payment vouchers were made to fully compensate ComEd for amounts due. (*See* Americana Ex. 1.5; Americana Ex. 1.0 at 398 – 421). ComEd's evidence rests on a hypothecation that the credit must have occurred on the missing bill, given that late payment charges were contested at the time. (*See* ComEd Ex. 1.0 at 481 –

525). Americana is in the difficult position of proving that a credit did not exist; ComEd is in the position of proving that a credit indeed was issued. Given that the missing bill occurred three months after the admitted error, vouchers were paid that matched amounts due, and no direct evidence was offered to show that a credit was issued, Americana is entitled to a refund from ComEd.

Exclusive of taxes and interest, Americana was over-billed $1,105.00 as a result of ComEd's error, calculated by taking the total demand billed for Meter 966 and adjusting it to zero (100.0 KW x $11.05/KW = $1,105.00). (Americana Ex. 1.0 at 267 – 269).

VII. COMED OVERCHARGED AMERICANA FOR THE BILLING MONTH OF 5/11/95 TO 6/12/95

On May 30, 2005 ComEd installed cumulative meter # W554944 ("Meter 944") at Americana's property. For the initial billing month for this meter (5/11/95 – 6/12/95 the demand reached 19.5 KW, with zero associated energy usage. (Americana Ex. 1.0 at 271 – 273). As discussed previously, registering any demand without any corresponding use is impossible. As shown on Americana Ex. 1.1, for the next 48 months, demand ranged between 0.8 and 2.0 KW.

ComEd agrees to another mistake that the billed 19.5 KW was in error. (ComEd Ex. 1.0 at 546). However, the issue of whether this particular error was rectified is actually quite difficult to ascertain. According to ComEd Witness Geraghty, ComEd issued and reissued bills during the months surrounding this particular error, and the ComEd IBS Transcript shows a credit was included on the corrected July 1995 issued on August 16, 1995 in the amount of $5,414.38. (ComEd Ex. 1.0 at 565 – 571). This, Mr.

Geraghty points out, is evidence such error was corrected in addition to other ComEd errors in billing, including credits for late payment charges. (Id. at 571 – 576)

Americana contends otherwise. The original billing, dated 6/19/95, showed no KW of demand or KWH of energy for the newly installed Meter 944. However, when ComEd issued another bill for the same period, ComEd incorrectly billed 19.5 KWs of demand on Meter 944 without any associated KWH of energy usage. Therefore, the "corrected" bill ComEd issued was actually "incorrect" and the overpaid amount associated with this issue was never refunded. (Americana Ex. 2.0 at 266 – 274).

Accordingly, ComEd overbilled Americana in the amount of $200.34. This amount is calculated by taking the incorrectly billed demand of 19.5 KW x $11.13 = $217.04. The actual demand associated with Meter 944 ranges between 0.8 KW and 2.0 KW. Using a value of 1.5 KW x $11.13 = $16.69, the amount approximating what the actual demand should have been. Subtracting $16.69 from $217.04 equals $200.34 before taxes and interest. (Americana Ex. 1.0 at 271 – 278).

VIII. COMED OVERCHARGED AMERICANA FOR THE BILLING MONTH OF 8/10/95 TO 9/11/95

ComEd committed two errors during this billing month 8/10/95 – 9/11/95, an estimated bill. The first error, for Meter #G787035 ("Meter 035"), ComEd billed a demand of 35.0 KW, which was between two to six times the correct, historical and normal demand. (Americana Ex. 1.0 at 281 – 282). ComEd argues that given that this demand was the highest registered reading over the period Meter 035 was in service does not make the readings incorrect. (ComEd Ex. 1.0 at 595 – 597). Americana asserts that the load factor associated with this demand is drastically different than other monthly billings. This incorrectly billed demand is within the realm of over-billed demands ComEd normally provides refunds to customers. (Americana Ex. 2.0 at 276 – 280).

The second error, for Meter #W755458 ("Meter 458"), which was first installed on 4/11/95, the 32.6 KW billed demand was between two to ten times the correct, historical and normal demand. (Americana Ex. 1.0 at 285 – 288). ComEd essentially argues that a credit issued to Americana on the September 1995 bill for unknown overcharges in the amount of $626.79 satisfies this issue as ComEd was working with Americana to establish a new point of service in the building (*See* ComEd Ex. 1.0 at 622 – 638), which suggests that ComEd agrees this 32.6 KW of billed demand was an error that should be rectified. Americana asserts that the erroneously estimated 32.6 KWs of demand on Meter 458 does not appear to have been credited on any subsequent bill. The previous credit on the September 1995 bill for $626.79 was certainly not for ComEd's errors for over-billed demands within this billing period; more likely, it was for credits for previous late payment charges. Subsequent billings do not show any credits for the over-billed demands of 35.0 KWs or the 32.6 KWs charged in the billing period from 08/10/95 to 09/11/95. (Americana Ex. 2.0 at 285 – 291).

Exclusive of taxes and interest, Americana was over-billed during this month in the amount of $481.31, calculated by taking the total demand billed for Meters 458 and 035 and dividing by two. For Meter 458 the over-billed equals $232.11; for Meter 035 the over-billed amount equals $249.20.

IX. COMED OVERCHARGED AMERICANA FOR THE BILLING MONTH OF 8/11/98 TO 9/10/98

ComEd admits to yet another error in crediting the excess demand associated with Meter 458 for the billing period 5/9/96 – 6/10/96 by issuing a corrected bill for this time period (ComEd Ex. 1.0 at 735 – 740). Such corrected bill Americana did not have in its records, but concedes to be true. (Americana Ex. 2.0 at 317 – 322). Accordingly, Americana does not now claim $155.82, which was the amount Americana calculated to be owed as a result of the excess KW error on Meter 458 for the billing period 5/9/96 – 6/10/96. (Id.).

During the billing period between 8/11/98 to 9/10/98, the demand associated with Meter 458 again registered an abnormally high level, 28 KW, higher than the amount that ComEd previously corrected for this exact meter. (*See* Americana Ex. 1.1; ComEd Ex. 1.0 at 735 - 744) Instead of capitulating on this issue, and despite pointing-out in the same paragraph that such error was admitted and credited previously, ComEd argues that they have no reason to believe this particular reading was incorrect. (*See* ComEd Ex. 1.0 at 735 – 752). Americana argues that this demand was "double-punched" by the ComEd meter reader. (Americana Ex. 2.0 at 324 – 328). A double-punch is likely given that it is almost exactly double the immediate and post meter readings. (Americana Ex. 1.1). Furthermore, ComEd's billing practices for the immediately preceding three years call into question their ability to accurately bill Americana in any capacity; Between August 1995 through August 1998, ComEd provided estimated bills for 29 of the 36 months, or over 80% of the time, a clear violation of 83 Illinois Administrative Code Part 280.80.

Accordingly, exclusive of taxes and interest, Americana assesses ComEd's over-billing on this issue to be $199.36, which is calculated by dividing the billed charge of $398.72 by two. (Americana Ex. 1.4, pg. 3).

X. COMED OVERCHARGED AMERICANA FOR THE BILLING MONTH OF 6/10/99 TO 7/12/99

On Americana's last billing period on Rate 6T, 06/10/99 to 07/12/99, the total billed energy was exorbitantly high – 337,112 KWH – compared to the historical range between 110,000 and 248,000 KWH for the prior 90 months. (Americana Ex. 1.0 at 312 – 316; Ex. 1.1). ComEd provides no reasonable argument in defense (*See* ComEd Ex. 1.0 at 706 – 730) but tacitly admits that this billing was indeed a mistake. (*See* Tr. at 378).

Performing a load factor analysis utilizing the total billed KWH (337,112) divided by the number of days in the billing period (32) times the number of hours in a day (24) times the total billed KW (443.9), so that 337,112 divided by (32 * 24 * 443.9) equals a 99% load factor for this period. (Tr. at 378). This means that in order for the total billed KWH to be a correct amount, the entire building's load would have had to be operating 99% of the time for 32 days, 24 hours a day.

Given that the KWH for this period is almost 100,000 KWHs more than any other month in the period covered in Americana Exhibit 1.1, coupled with the preposterousness of running all the equipment in the building full-out for every hour of every day for 32 days, definitively shows that Comed over-billed Americana excessively for the month of 6/10/99 – 7/12/99.

For simplicity, to calculate the overcharges (*See* Americana Ex. 1.0 at 317 – 327), Americana conservatively divided the incorrect KWH by two, applied the appropriate Rate 6 non-time of day charges vs. the inappropriate Rate 6T time of day charges, and subtracted the appropriate charges from the inappropriate charges so that:

Incorrect "Peak" KWHrs:	175,397 KWHrs x $0.05599/KWHr	= $ 9,820.48
Correct "Peak" KWHrs:	175,397 KWHrs/2 x $0.03167/KWHr	= $ 2,777.41
Over-billed/Overpaid "Peak" KWHrs:		= $ 7,043.07

Incorrect "Off-Pk" KWHrs:	158,869 KWHrs x $0.02341/KWHr	= $ 3,719.12
Correct "Off-Pk" KWHrs:	158,869 KWHrs/2 x $0.03167/KWHr	= $ 2,515.67
Over-billed/Overpaid "Off-Pk" KWHrs:		= $ 1,203.45

The over-billed/overpaid cost for KWHrs equals: $ 8,246.52

XI. COMED HAS COMMITTED SEVERAL VIOLATIONS OF ITS OWN TARIFFS, THE ILLINOIS PUBLIC UTILITIES ACT, AND THE ILLINOIS ADMINISTRATIVE CODE

The previous sections illustrate Americana's factual claims against ComEd, and for the most part, do not discuss ComEd's violations of laws except in limited circumstances. This section summarizes ComEd violations of statute in connection with this case:

1. ComEd violated its Rate 6 General Service Tariff by rendering incorrect demand billings over 500 KW over the nine-month period at issue in this case;
2. ComEd violated its Rate 6 General Service Tariff by placing Americana onto Rate 6T due to incorrect demand billings;
3. ComEd violated its Rate 6 General Service Tariff by placing Americana onto Rate 6T after only one billing over 500 KW;

4. ComEd violated the 83 Illinois Administrative Code Section 280.80 “Estimated Bills” by consecutively estimating billings for almost half (43 of 93) of the time periods contained in Americana Ex. 1.1. Outrageously, between 08/10/95 to 07/12/99, ComEd “estimated” 37 of 47 electric billings, or 79% of the time;
5. ComEd violated 83 Illinois Administrative Code Section 280.80 “Estimated Bills” by rendering many billings that were “estimated” without prominently showing the word “estimate” on the face of the bills;
6. ComEd violated 83 Illinois Administrative Code Section 410.150 “Complaints” by not complying with repeated requests to have their separately billed Garage (ComEd Account #4056492001) be placed onto Rate 6T, preventing reductions in electricity costs now totaling over $20,000.00. (Americana Ex. 2.0 at 246 – 250; Ex. 2.4). Americana estimates that its savings would equate to $250.00 per month for the past six years;
7. ComEd violated Section 9-241 of the Illinois Public Utility Act (“Illinois PUA”) by subjecting Americana to the disadvantage of electricity costs that were higher than any other public/common area condominium association. Those incorrect billings resulted in unreasonable differences in rates;
8. ComEd violated the Section 8-402 of the Illinois PUA by rendering electric bills to Americana that were not least cost;
9. ComEd violated Section 9-252 of the Illinois PUA by charging an excessive or unjustly discriminatory amount for its product, commodity or service, and;
10. ComEd is obligated by Section 9-252.1 of the Illinois PUA to refund overcharges(s) imposed upon and collected from Americana with interest from

the date(s) of overpayment(s) because ComEd rendered incorrect billings that included charges for a greater quantity of service provided.

XII. COMED OWES AMERICANA $181,182.35

Americana provided an updated summary of amounts due in Americana Ex. 2.1 which modified its previously submitted Americana Ex. 1.2. Exhibit 2.1 reflected taking into account the information provided in ComEd Ex. 1.0 with respect to two issues previously claimed, and conceding that those errors were properly rectified. Below is an updated summary of Americana Exhibit 2.1 taking into account the accumulated interest expense since November 30, 2006:

SUMMARY OF REFUNDS DUE

	Rate6T vs 6 Overcharges	KW Demand Overcharges	KWHr Energy Overcharges	Taxes at 15%	Prior Year End's Total Due	Interest at 5% on Prior Year End's Total Due	Year End Totals Due
1992	$ 0.00	$ 2,333.30	$ 0.00	$ 350.00	$ 0.00	$ 0.00	$ 2,683.30
1993	$ 3,368.32	$ 19,265.67	$ 24,839.98	$ 7,121.10	$ 2,683.30	$ 134.16	$ 57,412.53
1994	$ 3,652.10	$ 1,105.00	$ 0.00	$ 713.57	$ 57,412.53	$ 2,870.63	$ 65,753.83
1995	$ 6,121.37	$ 498.00	$ 0.00	$ 992.91	$ 65,753.83	$ 3,287.69	$ 76,653.80
1996	$ 4,681.47	$ 0.00	$ 0.00	$ 702.22	$ 76,653.80	$ 3,832.69	$ 85,870.18
1997	$ 4,718.56	$ 0.00	$ 0.00	$ 707.78	$ 85,870.18	$ 4,293.51	$ 95,590.03
1998	$ 5,621.48	$ 199.36	$ 0.00	$ 873.13	$ 95,590.03	$ 4,779.50	$107,063.50
1st 7 1999	$ 4,268.00	$ 0.00	$ 8,246.52	$ 1,877.18	$107,063.50	$ 3,122.69	**$124,577.89**
Thru 7/12/99	**$ 32,431.30**	**$ 23,401.33**	**$ 33,086.50**	**$ 13,337.89**		**$ 22,320.87**	
Last 5½ months in 1999					$124,577.89	$ 2,595.37	$127,173.26
2000					$127,173.26	$ 6,358.66	$133,531.92

2001	$133,531.92	$ 6,676.60	$140,208.51
2002	$140,208.51	$ 7,010.42	$147,218.93
2003	$147,218.93	$ 7,360.95	$154,579.88
2004	$154,579.88	$ 7,728.99	$162,308.87
2005	$162,308.87	$ 8,115.44	$170,424.31
2006 (11 months)	$170,424.31	$ 7,811.11	$178,235.42

TOTAL REFUND DUE TO AMERICANA as of November 30th, 2006 **$178,235.43**

Overcharges on Wrong Rate #6T vs. Rate #6	$ 32,431.30
Overcharges Due To Erroneous KWs	$ 23,401.33
Overcharges Due To Erroneous KWHrs	$ 33,086.50
Overcharges of Taxes at 15% from 05/13/92 to 07/12/99	$ 13,337.89
Accumulated Interest at 5.0% from 12/11/93 to 11/30/06	$ 75,978.41
	$178,235.43

At the end of November 30, 2006, ComEd owed Americana	= $178,235.43
The Accumulated interest at 5.0% A.P.R. for 4 months	= $ 2,946.92
Total Due to Americana at the end of March 30, 2007	= $181,182.35

TOTAL DUE AMERICANA FOR PAST OVERPAYMENTS = $181,182.35

XII. CONCLUSION

For all the reasons stated above, the Commission should grant the relief requested and order ComEd to immediately remit $181,182.35 to Americana. In addition, this brief touched on the additional issue of the difficulty Americana has had with ComEd regarding its garage facility; accordingly, as an additional matter, Americana requests any such additional relief that the Commission deems appropriate.

Respectfully submitted,

AMERICANA TOWERS
CONDOMINIUM ASSOCIATION

By____________________________
One of its Attorneys

Michael A. Munson
Law Office of Michael A. Munson
123 North Wacker Drive
Suite 1800
(312) 474-7872
(312) 873-4154 (facsimile)
michael@michaelmunson.com
Attorney for Americana Towers Condominium Association

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